

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:09CR-85-S

KAREN CUNAGIN SYPHER

DEFENDANT

ORDER

This matter is before the court on motion of the United States for a protective order to prevent the defendant, Karen Cunagin Sypher, from publicly disseminating information produced during discovery (DN 31). The United States has also moved the court to order a psychiatric examination of the defendant (DN 30).

The United States asserts that it seeks to prevent prejudice to Sypher's right to a fair trial by preventing further pretrial publicity concerning evidence in the case. It refers to a July 27, 2009 interview in which Sypher provided WDRB Fox 41 certain materials she had received in discovery. This incident occurred when she was apparently uncounseled. Sypher's retained attorney, Thomas Clay, had already requested to withdraw from the case, and replacement counsel had not yet been appointed at that time. On July 31, 2009 attorney James Earhart was appointed to represent Sypher. The United States' motion and reply brief were filed on August 21 and September 22, 2009, respectively. These documents do not detail any disclosures occurring after the appointment of Sypher's present counsel.

This prosecution involves a high-profile individual in the Louisville community who was allegedly victimized by this defendant. The underlying facts are salacious. The United States Attorney's Office issued a statement to the press at the time of the indictment identifying this public figure and the charges against the defendant. The media attention that the case has garnered thus

far has not been wholly one-sided. Six days after the filing of the motion for protective order, the alleged victim held his own press conference. In sum, the media coverage to date has not been excessive or surprising given that this prosecution involves a cast of characters which includes high-profile and outspoken individuals.

Inasmuch as Sypher is now represented by able and experienced counsel, the court has been shown no necessity for issuance of a protective order in this matter at this time.

The United States has moved for a psychiatric evaluation of Sypher pursuant to 18 U.S.C. § 4241. That section provides:

At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant,...the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense...

Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted...

18 U.S.C. §§ 4241(a) and (b).

The United States' proffer of information filed under seal is insufficient to meet the standard for a court-ordered psychiatric evaluation. The United States is under the misapprehension that it need only show that Sypher's behavior is "sufficiently irregular to require further inquiry." Reply Brief, p. 3. Rather, the statute requires a showing of reasonable cause to believe that she is suffering from a mental disease or defect rendering her unable to understand the nature and consequences of the proceedings or to assist in her own defense.

Sypher's current counsel has not indicated any difficulty in communicating with his client or securing her cooperation in matters relating to her defense. Former counsel is just that – former counsel. While he expressed some concern about Sypher's competency, the private evaluation made at his request found her competent. While the United States now calls into question the

thoroughness of that examination, the court cannot find, without more, that reasonable cause to question her competency has been shown.

As noted by defense counsel, the United States has characterized Sypher's conduct as "irrational, erratic and disjointed." However, a review of the materials submitted under seal does not reveal reasonable cause to believe that she suffers from a mental disease or defect that is preventing her from understanding her situation or dealing with her attorney. In general terms, the United States appears to be concerned with inconsistency and insensibility in her dealings with the matters at hand. The court does not find that the conduct recounted for the court evidences the reasonable cause mandated by statute to require the defendant to undergo a psychiatric or psychological examination.

Therefore, motions having been made and for the reasons set forth herein, **IT IS HEREBY ORDERED AND ADJUDGED** that:

1. The motion of the United States for a protective order (DN 31) is **DENIED**.
2. The motion of the United States for a psychological examination of the defendant (DN 30) is **DENIED**.

IT IS SO ORDERED.

October 27, 2009



Charles R. Simpson III, Judge
United States District Court